IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.5293 of 2006

Hickson & Dadaji Pvt.Ltd. & ors. Petitioners
Vs.
Mumbai Labour Union Respondents

Mr.J.P.Cama, Senior Counsel with Mr.A.K. Jalisatgi and Mr.Amol Desai for petitioners.

Mr.C.U.Singh, Senior Counsel with Ms.Neeta Karnik for respondents.

CORAM: B.H.MARLAPALLE,J.

September 01, 2006.

ORAL ORDER:

1. Heard the learned Senior Counsel for the respective parties. This petition impugns the judgment and order dated 20/6/2006 passed by the Industrial Court at Thane allowing Complaint (ULP) No.17 of 2004 and hence it is being treated as a petition under Article 227 of the Constitution.

2. The petitioner is a company incorporated under the Companies Act, 1956 with its registered office at Shree Pant Bhuvan, Mamasaheb Warerkar Bridge, Mumbai 400 007 and has a factory at Boisar, Tarapur. The respondent - Union is a registered trade union under the Trade Unions Act, 1926 with its office at Boisar, Dist. Thane. All the employees in Tarapur factory

had joined the respondent - Union in November 1995. The factory is engaged in the manufacture of colours and optical whitener. The Union had served a charter of demands to the petitioner - management on 13/12/1995 and for more than two years no settlement was arrived at. The production activities of the Tarapur factory were stopped from 27/3/1998 and on the basis of the balance sheet for the financial year ended 1998, it was declared a sick company under Section 3(1)(o) of the Sick Industrial Companies Special Provisions Act, 1985 (for short "SICA") and the Bank of Baroda was appointed as the agency to prepare a revival plan. A settlement came to be signed between the petitioner and the respondent - Union on 18/6/2001 in which it was agreed that the workmen listed in Annexure "A" to the settlement would submit their resignations and they shall be paid their full and final settlement of legal dues agreed at a figure of Rs.1.13 crores. In addition all the workmen so resigned would be offered reemployment in a need based manner on the basis of the seniority with the same service conditions. The amount of legal dues was to be disbursed within a period of three months from the signing of the settlement. This deadline of three months could not

be met and, therefore, another settlement was signed on 22/2/2002 wherein the period for payment of legal dues was extended. On 19/9/2002 the merger of the petitioner - company was approved by the BIFR and prior to that a tri-partite settlement was signed on 3/8/2002 wherein all the terms and conditions set out in the first settlement dated 18/6/2001 were reiterated and reaffirmed and it was agreed that the amount of legal dues will be paid within a period of 30 days from 3/8/2002. It was further agreed that in case the company failed to pay an amount of Rs.1.13 crores within the stipulated period of 30 days, it shall pay an amount of Rs.2 crores towards the legal dues in place of Rs.1.13 crores. The company also agreed that all the 107 workmen would be reemployed within 120 days and would be provided with work.

3. The company sent notices by post on 3/1/2003 calling upon the workmen to report for duty and the workmen reported for duty but the company could not offer work. The production activities of the company started for the first time on 15/8/2003. In the mean while between 18/1/2003 to 10/4/2003 all the 107 workmen were required to be employed. On 11/4/2003 the respondent company changed the weekly off. It

appears that earlier there were two weekly holidays and the company brought it down to one. The company also suggested reduction in work force and, therefore, the Union negotiated with the company and agreed that if an additional amount of Rs.25,000/- was paid to each of the workmen, some of them would submit their resignations. This proposal was accepted by 32 workmen but the company could not maintain the commitment to pay the additional amount of Rs.25,000/- and the proposal was withdrawn. Consequently, it was necessary for the company to allow all the 32 workmen to report to the duty. 28 workmen reported for duty on 1/5/2003 and the remaining four viz. Shri V.Y.Kadam, T.S.Dhulop, P.B. Thorat and K.P.Shinde reported for duty on 2/5/2003 but they were not allowed to enter the factory premises on some pretext or the other by the management. The Union went on submitting representations regarding these four workmen but there was no response from the management. On 14/5/2003 the Union addressed a letter to the Chairman of the petitioner - company and requested the company to allow these four workmen to report. There was no response. The management also started issuing fresh appointment orders to the workmen which

changed the service conditions and, therefore, the workmen refused to accept these appointment orders pointing out that as per the agreement signed between the parties the workmen were to reemployed without change in service conditions. The management insisted on fresh appointment orders and this led to agitations. The company displayed notices on 15/11/2003, 21/11/2003 and 10/12/2003. The company refused entry to all the workmen in the factory premises from 18/12/2003 onwards and thus they were locked out. As per the Union this was an act of unfair labour practice within the meaning of Item 6 of Schedule II of the MRTU & PULP Act, 1971 and in addition the company was guilty of unfair labour practice within the meaning of Items 9 and 10 of Schedule IV of the said Act. Hence Complaint (ULP) No.17 of 2004 was filed by the Union before the Industrial Court at Thane. The management filed its reply and opposed the complaint. Oral and documentary evidence was led by both the parties and finally the complaint came to be allowed by the impugned judgment and order and the Industrial Court gave the following directions by holding that the company was guilty of unfair labour practice within the meaning of item 9 of Schedule IV of the MRTU &

PULP Act:

(a) The respondent company to pay wages to the workers during the period from 18/12/2003 till 7/2/2004.

(b) The company was restrained from incorporating any change in the service conditions, by issuing any fresh appointment letters to its workers and further to maintain the service conditions existing on the date of submission of resignation letters by the workmen so as to implement clause 5 of the settlement dated 18/6/2001.

(c) The company was at liberty to make such changes in the service conditions by following due process of law.

(d) The company to disburse the balance amount of Rs.87 lacs to the concerned workmen within a period of one month.

(e) The company to pay wages to its employees from 18/1/2003 to 10/4/2003 within a

period of one month.

(f) The company to allow to report for duty the following workmen viz. (i) V.Y.Kadam, (ii) T.S.Dhulop, (iii) P.B. Thorat and (iv) K.P.Shinde and to pay them full wages from 23/11/2002 till they resume work.

(g) The company to maintain weekly off as prevailing at the time of tendering resignations by employees and implement clause no.5 of the settlement dated 18/6/2001.

4. Mr.Cama, the learned Senior Counsel for the company submitted that the cheques were issued to all the workmen within a period of 30 days as agreed in the settlement dated 3/8/2002 and, therefore, there was no breach of the settlement, the service conditions were not changed by the company and the four workmen on their own had left the employment of the company and even if it was their case that they were not allowed to join for duty, their resignations became final or in the alternative it was a case of oral termination of service and, therefore, they could have approached the Labour Court under Item 1

of Schedule IV of the MRTU & PULP Act. He also submitted that the complaint was filed belatedly and that too in the year 2004 when the period for disbursement of the legal dues amount had expired on 2/9/2002. The complaint could not have been entertained by the Industrial Court unless the delay was condoned on an application filed for condonation of delay separately.

5. At the outset it must be noted that the petitioner company did not file written statement opposing the complaint. It had filed reply opposing the application for interim relief filed under Section 30(2) of the Act and the said reply was adopted as the written statement. In its reply the issue of limitation was never raised by the company and, therefore, there was no occasion for the Industrial Court to frame the issue of limitation while deciding the complaint. Nevertheless during the course of oral arguments before the Industrial Court it appears that the issue of limitations was raised by the company and the same has been dealt with appropriately by the Industrial Court. It must be noted that there is continuous cause of action right from 2/9/2002 to 18/12/2003 when the operations

of the factory were brought to a stand still by the alleged lock out by the company. The complaint has been filed sometime in the month of January 2004 and, therefore, the contentions that it was filed belatedly have to be rejected outrightly.

6. Admittedly the limit of 30 days to disburse the amount of legal dues to the workmen expired on 2/9/2002. The workmen were issued cheques from 2/9/2003 to 14/9/2003 but not all of them. It has come in the evidence that the company opened an account by depositing a meagre amount of Rs.5000/-, obtained a cheque-book and went on issuing cheques. Consequently 90 per cent of the cheques were bounced and by the time workmen started receiving their amounts it was almost towards the end of September 2003. The evidence placed before the Industrial Court clearly shows that none of the workmen had received the amount of legal dues by 2/9/2002 as was required in the third settlement dated 3/8/2002. The findings of the Industrial Court that the company could not maintain this limit of 30 days do not call for any interference. In addition, the failure of the company to disburse the legal dues amount within the stipulated period agreed in the first settlement

dated 18/6/2001 resulted in the increase of the legal dues amount and it went to Rs.2 crores. The Union was able to persuade the workmen to sacrifice and accept the original amount of Rs.1.13 crores provided it was paid within 30 days' time. The petitioner - company failed to maintain its commitment and, therefore, as per the provisions in the settlement itself it was required to pay an amount of Rs.2 crores by way of legal dues of the workmen. It paid an amount of Rs.1.13 crores and, therefore, the Industrial Court rightly directed to pay an amount of Rs.87 lacs.

7. The issue of reemployment of the four workmen i.e. Shri V.Y. Kadam, Shri T.S.Dhulop, Shri P.B. Thorat and Shri K.P. Shinde is concerned, the evidence clearly shows that they reported on 2/5/2003 and they were not allowed to report for duty. The Union repeatedly took up their cause with the management and these were the workmen from 32 workmen who had agreed to accept the additional amount of Rs.25,000/- and forgo the claim of reemployment but this proposal was withdrawn by the company unanimously and, therefore, their right to be reemployed remained intact as per the settlement

dated 3/8/2002. There was no question of termination of service either orally or in writing and a right was created in their favour for being reemployed along with others. It was not necessary for these four workmen or any one of them to approach the Labour Court or file a complaint under Item 1 of Schedule IV of the Act.

8. The settlement also clearly stated, and more particularly clause no.5 of the settlement dated 18/6/2001, that on reemployment the service conditions of the workmen would not be changed and if the company wanted to change certain service conditions, the required legal procedure was not followed. By issuing the appointment orders, as has been proved by the evidence, the company sought to change the service conditions including the monthly wages. The workmen rightly did not accept the appointment orders with such changed salaries. The company committed unfair labour practice on all counts within the meaning of Item 9 of Schedule IV of the Act.

9. The learned Member of the Industrial Court has in detail examined the oral as well as documentary

evidence adduced before him by both the parties and the reasonings in support of his findings that the company was guilty of unfair labour practice within the meaning of Item 9 of Schedule IV of the Act do not amount to perverse or grossly erroneous findings. Hence challenge to the impugned order is devoid of merits and this petition must fail at the threshold.

10. The petition is hereby rejected summarily.

(B.H.MARLAPALLE,J.)